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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/748,033

12/30/2003

Peter Muhlradt

29473/11899A

7597

4743

7590

05/16/2006

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EXAMINER

AUDET, MAURY A

ART UNIT

PAPER NUMBER

1654

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/748,033

Applicant(s)

MUHLRADT ET AL.

Examiner

Maury Audet

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1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/30/2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-12 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction is required under 35 U.S.C. 121.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept.

In accordance with 37 CFR 1.142 applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

I.-? Claims 1-12, drawn to a method of treating a wound comprising administering a lipopeptide or lipoprotein composition of a general structure, wherein the specific peptide portion of the structure may be any amino acid sequence between 1 and 25 amino acid residues; classified in class 514, subclass 12.

The inventions are distinct, each from the other because of the following reasons:

Inventions I.-? are independent and distinct, each from the other, since the methods are drawn to the use of distinct lipopeptides, e.g. the peptide portion of the lipopeptide or lipoprotein general structure may contain any amino acid sequence between 1 and 25 amino acid residues. Namely, the Inventions are drawn to methods of using compositions comprising distinct lipopeptide structures, which are each independent and distinct. The search for each of the above inventions is not co-extensive particularly with regard to a compound search of each within the literature search. Further, a reference, which would anticipate the invention of one group, would not necessarily anticipate or even make obvious another group, absent evidence to the contrary.

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A thorough search of the methods of using the distinct compounds would be independent and distinct and constitute an undue search burden.

The several inventions above are independent and distinct, each from the other. They have acquired a separate status in the art as a separate subject for inventive effect and require independent searches. The search for each of the above inventions is not co-extensive particularly with regard to the literature search. Further, a reference, which would anticipate the invention of one group, would not necessarily anticipate or even make obvious another group. Finally, the consideration for patentability is different in each case. Thus, it would be an undue burden to examine all of the above inventions in one application. Restriction for examination purposes is therefore proper.

Because these inventions are distinct for the reasons given above and the search required for each group is not necessarily required for the other groups, restriction for examination purposes as indicated is proper.

***Requirement for Peptide (or Nucleic Acid encoding same) Election***

The lipopeptides (designated Y in the structure) do not contain a substantial, distinguishable core structure/sequence that runs through them respectively (e.g. SEQ ID NO: 1 to GQTNT versus SEQ ID NO: 2 to SKKKK). Thus an individual sequence and/or structure search is required of each compound of the invention. Therefore, irrespective of which Group I-? is the elected invention, Applicant is required elect a single peptide to which the invention will be examined on the merits as drawn to. Alternatively, Applicant may choose to elect one of the

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following distinct peptide groups, which the Examiner is willing to search based on structural similarity, as drawn to the invention:

- 1) SEQ ID NOS: 1 and 5;
- 2) SEQ ID NOS: 2 and 6;
- 3) SEQ ID NOS: 3, 7, 8, and 10; or
- 4) SEQ ID NOS: 4 and 9.

**This requirement is not to be taken as an election of species, but rather as an election of a single invention, since each compound is assumed to be a patentably distinct invention, in the absence of evidence to the contrary.**

#### ***Species Election***

In addition to the above, this application contains claims directed to the following patentably distinct species directed to the remainder of the lipopeptide structure:

1.  $R^1$  – e.g. C7 alkyl;
2.  $R^2$  – e.g. C7 alkyl;
3. X – e.g. S, O, or  $CH_2$ ;
4.  $Z^1$  – H or methyl;
5.  $Z^2$  – H or methyl;
6. W – CO or  $S(O)_n$  (and n as 1 or 2); and

7. Applicant must also indicate whether the  $-COOH$ , is simply part of the peptide (Y loci) that is elected (e.g. C-terminus), or separate from and connected to either the C or N-terminus of the peptide at the Y loci.

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The species are independent or distinct because a search for any of the above species is not necessarily co-extensive particularly with regard to the literature search and a reference, which would anticipate any one of the above species, would not necessarily anticipate or even make obvious another species, absent evidence to the contrary.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

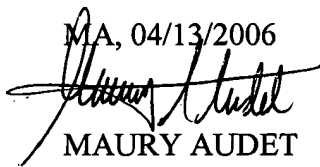
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maury Audet whose telephone number is 571-272-0960. The examiner can normally be reached on M-Th. 7AM-5:30PM (10 Hrs.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecelia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA, 04/13/2006



MAURY AUDET  
PATENT EXAMINER  
ART UNIT 1654